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No. 84-982

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

SCOTT CHAPMAN, PETITIONER

v.

JOAB L. THOMAS AND THOMAS H. STAFFORD

ON PETITION FOR WRIT OF CERTIORARI
TO THE FOURTH CIRCUIT COURT OF APPEALS

PETITIONER'S REPLY

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PETITIONER'S REPLY

Although the reasons which Petitioner believes warrant the grant of the writ sought are adequately stated in the Petition, he believes that a reply is warranted in order to correct several assertions contained in Respondents' Brief in Opposition so that the issues raised by Petitioner are before this Court in sharp focus.

I. The Scope, Interpretation, and Enforcement of the North Carolina State University (NCSU) Solicitation Policy.

In their Brief in Opposition the Respondents take issue with Petitioner's that the Solicitation Policy at issue here "was interpreted as preventing, and enforced to prevent, Chapman or any NCSU student from personally approaching another student on a one-to-one basis either in the dormitory hallways or in the student's room to invite that student to a discussion of Scripture." Brief in Opposition, p. 1. Respondents argue the above factual statement is incorrect in that the policy was never enforced to prevent nor interpreted as preventing any action that is not specifically proscribed by the policy, that the policy specifically prohibits door-to-door solicitation in the dormitory residence areas, and that Petitioner was prosecuted in the student courts simply for conducting door-to-door solicitation in one of the residence halls. Id. at pp. 1-2. Respondents urge

that there is nothing in the record which indicates that Petitioner was prosecuted for speaking to another student in a dormitory hallway or for speaking to a student in his room, so long as any invitation to enter some student's room was not the result of the door-to-door solicitation. Id. However, Respondents here misrepresent the policy's prohibitions and fail to take note of several pertinent items in the record in this case.

As a reading of the pertinent part of the NCSU Solicitation Policy, Petition p. 24a, makes clear, the policy deals with four enumerated categories of noncommercial solicitation and canvassing activities, those relevent to the issues raised by Petitioner being parts II. A. I and IV. Very simply, the ban here at issue is not, as Respondents seem to suggest, an absolute ban on "soliciting" or "canvassing activities" by dormitory residents in their residence halls. Indeed, such a prohibition, which would preclude dormitory residents from going down the halls door-to-door asking friends to accompany

them to basketball games, is in conflict with the university's own Disruption Policy, which appears along with the Solicitation Policy in the Student Handbook. This handbook is adverted to by Larry Gracie in his affidavit of December 2, 1980, which is reproduced in pertinent part in Reply Appendix A. The Handbook explains, "'the university Disruption Policy upholds your 'right of free discussion and expression, peaceful picketing and demonstrations, and the right to petition and to peaceably to assemble.'" NCSU Student Handbook for 1980, p. 42. It is clear from the foregoing that while the university intended to allow students free expression in general, it attempted specifically to prevent students from going through their residence halls expressing either religious ideas or political opinions that did not deal with student politics.

In regard to Respondents' contention that nothing in the record indicates that Petitioner or any other student was prosecuted for speaking to

another student in a hallway of the dorms or in the student's room, the affidavits of Elwood Becton of December 3, 1980, and Petitioner, Scott Chapman, of October 30, 1980, both part of the record in this case and reproduced in pertinent part as Reply Appendix B and Reply Appendix C respectively, are noteworthy. Becton, the Assistant Director of Student Development at NCSU, said that after Petitioner Chapman had at one point discussed his solicitation activities with Becton, telling Becton that Chapman would knock on the door, converse with the resident and invite him to a religious meeting, Becton informed Petitioner that his actions "were exactly the type of conduct the university sought to prohibit." Reply, p. In his uncontradicted affidavit, Chapman said that after his church group began holding discussions and after he "let some of the guys on [his] floor know about the discussions," Jeff Hunter, the Resident Director, told Chapman that he had broken the school's Solicitation Policy. Reply, p.

II. Conflict with Applicable Decisions and Importance of Issues Presented.

A. Applicability of the Holdings in Tinker and Mosley.

Respondents contend that the analysis and holding in Tinker v. Des Moines School District, 393 U.S. 503 (1969), is not applicable to the present case, because the university has never attempted to prohibit the expression of some particular opinion, but rather has acted to regulate a form of expressive conduct irrespective of the speakers message. However, as noted in the Statement of the Case in the Petition, candidates for student government offices were explicitly exempted from the Solicitation Policy's stated prohibitions against noncommercial solicitation. Petition, p. 5. Student politicians could "canvass" door-to-door, students could not, however, "canvass" door-to-door to urge the election of Ronald Reagan as President of the United States without risking expulsion. And religious students could not canvass

other students in precisely the same fashion as student politicians were allowed to do because religious ideas are out of bounds under the policy.

Indeed, the language cited from Tinker by Respondents --

> It is also relevant that the school authority did not purport to prohibit the wearing of all symbols of political or controversial significance. Id. at 510. --

supports Petitioner's position here. NCSU did not prohibit all political or controversial discourse on the part of students door-to-door down dormitory hallways, but it did stop Petitioner from inviting fellow students to discussions of Scripture.

Further, Respondents assert in regard to Petitioner's argument for the relevance of an equal protection analysis in the instant case that the Petition attempts to bring the instant case within the scope of Police Department of Chicago v. Mosley, 408 U.S. 92 (1972), by claiming the entire NCSU campus is an open forum for student First Amendment activities. Respondents find

error in this in that this Court has stated that students do not have an absolute constitutional right of access to all university buildings or grounds. Widmar v. Vincent, 454 U.S. 63 (1981).

The basis of Petitioner's argument, however, is that because Petitioner and student politicians are all students, they are all similarly situated in regard to the forum in question. And insofar as students enjoy First Amendment rights to some extent on college campuses, which Respondents do not dispute, Petitioner's and student politicians' speech rights should be coextensive in scope. If they are not, as they were not at NCSU, then, under the reasoning of Mosley, the curtailment of Petitioner's speech rights must be evaluated under an equal protection analysis. Petitioner then simply stresses the similar situation of Petitioner in regard to other students who were student politicians in making this argument.

B. Importance of Issues Presented.

Respondents argue that the policy in question

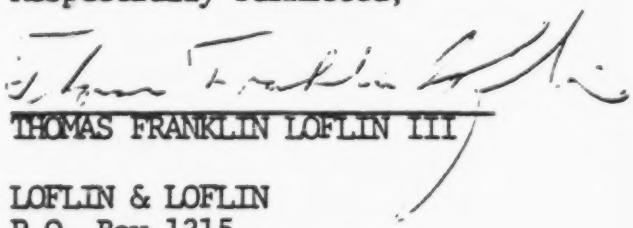
really imposes a slight restriction on Petitioner's expressive activities. However, as noted under Part 1, supra, what is prohibited is particular types of speech, notably religious speech and political speech by other than student politicians. As such, the restriction applies to both types of speech which a plurality of this Court has found to be those most cherished by the framers and which should be most staunchly protected against even slight infringement by the state. Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976). Indeed, under the Solicitation Policy here defended by Respondents, dormitory residents could canvass door-to-door down their dormitory halls inviting fellow students to a basketball game or urging them to come along to see stag films at a fraternity house without risking their university careers, but should the same students' canvassing in the same manner urge other students to vote for Ronald Reagan as President or to come to a discussion of Scripture, they risk severe academic

sanctions. By the opinion below, the law of the Fourth Circuit is presently that state officials crafting university policies have discretion to restrict political and religious speech among adult university students in student housing so long as it is merely a "reasonable" restriction. The opinion below thus presents a very real threat to important and fundamental freedoms.

CONCLUSION

For the foregoing reasons, as well as those which have been urged in the Petition, Certiorari should be granted.

Respectfully submitted,



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Reply Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 84-982

Scott Chapman,

Appellant,

versus

Joab L. Thomas and Thomas H. Stafford,

Appellees.

STATE OF NORTH CAROLINA AFFIDAVIT OF

COUNTY OF WAKE LARRY W. GRACIE

Larry W. Gracie, being sworn now deposes and says:

In my responsibilities as Director of Student Development, I am charged with a series of non-academic policies and their regulations. I served in this capacity during the time the current University Solicitation Policy was reviewed and implemented.

This policy, with other non-academic policies,

is printed for distribution from the Student Development office to any individual interested and is incorporated into University and Student Government documents. Two of the most notable publications in which the "Solicitation Policy" appears is the Student Handbook prepared by Student Development and the Student Body Statutes prepared by Student Government. Both of these documents are made available to all students through Orientation at the beginning of each year then throughout the year at key distribution points....

....

....

This the 2nd day of December, 1980.

/s/ Larry W. Gracie
Director of Student Government

Reply Appendix B

STATE OF NORTH CAROLINA
COUNTY OF WAKE

AFFIDAVIT OF
ELWOOD BECTON

ELWOOD BECTON, being duly sworn now deposes and says:

I am employed by North Carolina State University and hold the position of Assistant Director of Student Development. One of my duties include being the advisor to the University Judicial System.

Response to October 30 Affidavit of Scott Chapman:

During the summer of 1980, the Department of Residence Life received complaints from students that a certain religious group was violating the University Solicitation Policy by going door-to-door solicitation in Turlington Residence Hall. A meeting was called to ascertain whether violations had occurred, to explain the policy to leaders of the group, and to inform the students that disciplinary action could result if violations of the policy, if any, continued. This meeting was

held on June 24, 1980. In attendance were Scott Chapman and Paul Ray, leaders of the religious group, and Dr. Charles Oglesby, Dr. Larry Gracie, Jeff Hunter and myself. After Scott Chapman and Paul Ray detailed their solicitation operation to us, there was no doubt that their activities were prohibited by the policy. They told us that they had a systematic method of soliciting students who lived in residence halls. Basically each member of their group was assigned a number of rooms in which they would be responsible for. The rooms on a particular floor of a residence hall would have a group member contact the residents who lived therein. It did not make any difference whether or not the group member was acquainted with the students who lived in his assigned area. The group member was to knock on the door, make light conversation with the resident(s), and then invite the student(s) to a religious meeting. After this was done, the group member was to proceed to the next door on his list and perform the same routine

until he had covered all of his assigned areas.

We informed Mr. Chapman and Mr. Ray that their actions were exactly the type of conduct the University sought to prohibit....

....

....

....

This the 3rd day of December, 1980.

/s/ Elwood Becton
Student Development

NORTH CAROLINA

WAKE COUNTY

I, Rebecca L. Griffith, a Notary Public, do hereby certify that Elwood Becton personally appeared before me this day, was sworn and affixed his signature to the foregoing affidavit.

Witness my hand and notarial seal, this the 3rd day of December, 1980.

/s/ Rebecca L. Griffith
Notary Public

My Commission Expires:
September 26, 1985

Reply Appendix C

NORTH CAROLINAQ AFFIDAVIT

WAKE COUNTY

I, SCOTT ALLEN CHAPMAN, being duly sworn, depose and say:

I am a sophomore at North Carolina State University majoring in "Engineering Operations". I hope to fly for the United States Air Force and I am currently enrolled in AFROTC. My hometown is Wilmington, Delaware.

I became a Christian on October 7, 1979. As a Christian, it is my conviction to study the word of God, the Bible. I have entrusted my life and my death to the teachings of the Bible. I sincerely believe that anyone who does not obey the teachings of the Bible will not be able to enjoy the best life possible and will also perish in hell eternally, separated from God forever. It is because of these reasons that I want to share my beliefs. This is why I am a member of the Church of Christ.

The Church of Christ obeys the teachings of the Bible and is also actively involved in the spreading of the gospel of Christ. One of the ways that we spread the gospel is to sponsor Biblical discussions in which we invite other people to attend. The discussion is led by a member of the Church of Christ who picks a topic for each discussion. We read some scripture together and then the leader asks questions about the reading and we discuss it.....

The only way to have visitors attend is to let them know about the discussions. While living in a dorm at North Carolina State University, I try to give the opportunity to as many people as I can to attend the discussions. I always introduce myself first and then ask them for their name. After this I immediately state my purpose in coming to their room, I let them know about the discussion and then I ask them if they would be interested in attending. If someone is not interested in coming to the discussion, then I will not bother

or hassle them because of their decision.... If someone is interested, I let them know that they are more than welcome to attend, and I tell them the time and place of the next meeting.

During the summer of 1980, I attended summer school and I lived in Turlington Dormitory at NCSU. I and some other members of the Church of Christ decided to sponsor a biblical discussion in Turlington Dormitory. I asked and received permission from Jeff Hunter (Resident Director) to use the student lounge to hold our weekly discussions in. We began holding the discussions and letting people know about them. I let some of the guys on my floor know about the discussions and many were interested in attending. On June 1, 1980, after two meetings in the lounge, Jeff Hunter told me that we could no longer have the discussion in the lounge because we had broken the school's solicitation policy. We continued to hold the discussions, but they took place in my room, with my roommate's permission. About a week

later, Jeff Hunter wanted to see me again. Paul Ray (the discussion leader) and I went to see Jeff and he told us that we were breaking the solicitation policy when we let people know about the discussions....

....

....

....

/s/ SCOTT ALLEN CHAPMAN

SWORN TO and subscribed before me
this the 30th day of October, 1980.

_____ ILLEGIBLE
NOTARY PUBLIC

My Commission Expires _____ ILLEGIBLE

CERTIFICATE OF SERVICE

I, Thomas Franklin Loflin III, a member of the Bar of the Supreme Court of the United States and counsel of record for Scott Chapman, Petitioner herein, hereby certify that on March 18, 1985, pursuant to Rule 28, Rules of the Supreme Court, I served copies of the foregoing Petitioner's Reply to Respondents' Brief in Opposition to Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit on the opposing party as follows:

On Joab Thomas and Thomas Stafford, Respondents herein, by depositing three copies in the U.S. Post Office in Durham, N.C., with first-class postage prepaid, properly addressed to Respondents' counsel of record, Edwin M. Speas, Jr., Esq., Special Deputy Attorney General, and Thomas J. Zilo, Esq., Department of Justice, P.O. Box 629, Raleigh, N.C. 27602.

I further certify that all parties required to be served have been served.

Dated March 18, 1985.

THOMAS FRANKLIN LOFLIN III